

2004 Partners in Public Purchasing

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***New Public Contracting Code and
Model Public Contract Rules***

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I. INTRODUCTION TO THE PUBLIC CONTRACTING CODE

A. History and Timing

The current Public Contracts and Purchasing Laws in ORS Chapter 279 are nearly 30 years old and they predominately reflect the strict structure of public improvement contracting for which they were written. They are therefore less adaptable to modern and innovative contracting practices that would be more useful in the age of information technology, telecommunications and public-private “partnerships.” The current laws have also been amended in a patchwork fashion over several decades, contain many internal inconsistencies and are difficult to work with (even for the experienced practitioner).

In response to House Resolution 1 (2001), representatives of local governments, schools, state agencies, contractors, unions, and trade organizations worked in the 2002

interim on a comprehensive rewrite of Oregon's public contracting laws. That was the third consecutive attempt and the third time was the charm.

Reflecting practices suggested by the ABA Model Procurement Code, as well as input in 2002 from scores of special work groups, affected interest groups and hundreds of individual participants, the new Public Contracting Code (comprised of ORS Chapters 279A, 279B and 279C, and referenced here as the "Code") becomes operative on March 1, 2005. The new Code, enacted as House Bill 2341 in the 2003 Regular Session, will apply to public contracts first advertised, or if not advertised then entered into, on or after March 1, 2005. (Oregon Laws 2003, chapter 794, section 336).

B. Rule Making Requirements

A great deal of state and local government rule making activity has already taken place in order to implement the new Code. In fact, the underlying legislation requires it. Pursuant to Oregon Laws 2003, chapter 794, section 334, all of the state and local government rules and exemptions adopted under the public contracting statutes to be repealed in current ORS Ch 279 are themselves repealed as of the March 1, 2005 effective date of the new Code, although that will not invalidate or terminate any existing public contract. Accordingly, public contracting agencies that have not already begun considering the effect of the new Code on their contracting rules and exemptions should get started on that effort without delay.

C. Model Public Contract Rules

Most state and local public contracting agencies will be subject to the Attorney General's Model Public Contract Rules (comprised of OAR Chapter 137, Divisions 46, 47, 48 and 49, and referenced here as the "Model Rules") that implement the new Code, and the Model Rules themselves will apply to public contracts first advertised, or if not advertised then entered into, on or after March 1, 2005. However, agencies have an election to make about the Model Rules, including whether to opt out in whole or in part, as described below. Recognizing that those agencies would need to have an early look at the Model Rules in order to make that determination in time for their own rulemaking schedules, the Code set an early date for promulgation of the Model Rules – six months in advance of the Code's effective date. Oregon Laws 2003, chapter 794, section 335(2) requires that the Attorney General adopt Model Rules implementing the new Code by

September 1, 2004, with an effective date six months later on March 1, 2005. That requirement was fulfilled (and DOJ gratefully acknowledges the assistance of its formal Rules Advisory Committees, as well as input received in consultation with state and local government representatives and affected industry groups, in meeting that deadline).

D. Contracting Agency Choices

Under ORS 279A.065 (parallel to current ORS 279.049) public contracting agencies in Oregon that are not exempt from the Code will be operating under the DOJ Model Rules by default on March 1, 2005 unless they have taken special action under that statute to opt out and to adopt their own contracting rules (which may include portions of the Model Rules by reference). The Department of Administrative Services, State Procurement Office (DAS-SPO), is also developing a DAS-SPO set of contracting rules for state agencies under its procurement authority. Information on the Model Rules as adopted and filed on September 1, 2004, as well as on DAS-SPO rules, is available on line (for Model Rules click on “DOJ Model Public Contract Rules”) at

<http://www.oregon.gov/DAS/PFSS/SPO/ors279-menu.shtml>

DAS-SPO is the state’s central procurement authority, and state agencies without independent contracting authority either have DAS-SPO make their procurements for them, or operate under DAS-SPO rules when proceeding under delegated authority from that agency. Although DAS-SPO has traditionally adopted most of the Model Rules by reference, that agency now plans to adopt its own parallel rules that will closely track the Model Rules with specific changes noted in DAS-SPO rules commentary.

E. Organization of Model Rules

Consistent with the organization of the new Code, the Model Rules described in detail below are organized into corresponding divisions under OAR Chapter 137, with the historical exception of maintaining design consultant rules (for Architects, Engineers and Related Services) in a division separate from the construction rules, so that four divisions of Model Rules were promulgated rather than three, with each division of rules corresponding to one of the three chapters of the Code.

1. OAR Chapter 137, Division 46 (based on ORS Ch 279A). These base provisions contain overarching rules that affect all public contracting activities, including

definitions, policies, affirmative action, contract preferences and cooperative procurement.

2. OAR Chapter 137, Division 47 (based on ORS Ch 279B). These new provisions address public procurements for goods and services, including source selection, types of procurements, the procurement process, specifications and legal remedies.

3. OAR Chapter 137, Division 48 (based on ORS Ch 279C). This reorganized set of rules regulates the consultant selection process, including public contracts for architectural, engineering, land surveying and related personal services.

4. OAR Chapter 137, Division 49 (also based on ORS Ch 279C). Parallel to the current statutes and rules, these reorganized provisions address public improvements and other public construction contracts, including procurement rules, alternative contracting methods and construction contract provisions.

DAS-SPO rules will have a similar numbering system within OAR Chapter 125, with Division 246 (General Provisions), Division 247 (Procurements of Supply and Services), Division 248 (Consultant Selection) and Division 249 (Construction Services), reflecting the same topics as the Model Rules in DOJ's corresponding OAR Chapter 137, Divisions 46, 47, 48 and 49.

F. Public Contracts Manual

The Attorney General's Public Contracts Manual, including all four divisions of Model Rules with official DOJ rules commentary, public contracting statutes, constitutional provisions, selected case law summaries and references to related Oregon Administrative Rules from other state agencies, has been completely revised and is available to the public as a public contracting reference source. Copies may be ordered by calling 503.378.2992.

II. ORS Ch 279A and DIVISION 46 OF THE MODEL RULES

A. Overview

ORS Chapter 279A is applicable to all three chapters of the Code, and Division 46 of the Model Rules is applicable to all four divisions of the Model Rules. Chapter 279A describes the public contracts to which the Code is applicable (and those to which

it is not), and addresses several administrative matters, such as establishing local contract review boards, application of the Attorney General's Model Public Contract Rules, and individual contracting agency rulemaking authority with respect to matters of public contracting.

Chapter 279A also establishes some substantive legal requirements applicable to all public contracting. In addition to the matters discussed below, ORS Chapter 279A gives contracting agencies the authority to purchase under certain federal programs without engaging in competitive processes otherwise required by the Code, and provides authority for local contracting agency disposal of personal property and transfer of fire protection equipment among regularly organized fire departments without engaging in competition otherwise required by the Code. The Model Rules do not address those issues.

Finally, ORS Chapter 279A also includes several sections specific to state contracting agencies and their contracting activities. ORS 279A.050 and ORS 279A.140 together provide the framework for the allocation of contracting authority among state agencies and establish certain public contracting procedures for state agencies. In addition, ORS 279A.250 through ORS 279A.290 provide procedures for the disposal of surplus property of state agencies. Neither the Model Rules, nor these materials, address those provisions of ORS Chapter 279A.

B. Definitions

ORS 279A.010 contains the definitions of certain terms when they are used in the Code. Other terms are defined in context. OAR 137-046-0110 establishes the definitional framework for the Model Rules, and defines certain terms that are not defined in the Code. Generally, unless the context of a specifically applicable definition in the Code requires otherwise, terms defined in the Code have the same meaning as set forth in the Code when they are used in the Model Rules.

C. Personal Services

The Code preserves local contracting agencies' authority both to designate particular contracts or classes of contracts as contracts for personal services,¹ and to establish separate procedures for screening and selecting persons to perform personal services.² Local contracting agencies may, but are not required to, use the source selection methods set forth in ORS Chapter 279B to award contracts for personal services. To do so, they must adopt rules as further discussed below. State contracting agencies must use those source selection methods set forth in ORS Chapter 279B to award contracts for personal services.³ The personal services of contractors who perform architectural, engineering and land surveying services and related services are treated differently from other personal services. See Section IV of these materials for a detailed description of that treatment.

D. Application of the Code and the Model Rules

Generally, the Code applies to all public contracting.⁴ However, the Code does not apply to the classes of contracts set forth in ORS 279A.025(2), nor does it apply to the public contracting of the agencies or boards identified in ORS 279A.025(3). Other provisions of law may exempt certain contracts or the contracting activities of certain public bodies from the Code's application.⁵ Finally, contracting agencies may enter into contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals without following the screening and selection procedures set forth in ORS Chapter 279B, and may enter into contracts or price agreements for some types of goods and services based on purchases under certain federal programs, or through a cooperative procurement conducted as set forth in ORS 279A.200 through 279A.225 as an alternative to following screening and selection procedures set forth elsewhere in the Code.

ORS 279A.065(1) directs the Attorney General to prepare and maintain model rules of procedure for public contracting. Unless a contracting agency subject to the Code adopts its own rules of procedure for public contracting that specifically state that the

¹ ORS 279A.055(2). It is likely that the legislature will be asked to consider a bill that will, among other things, amend the Code to clearly establish for state contracting agencies who has the authority to designate certain contracts or classes of contracts as personal services contracts. See Section VI on amendments.

² ORS 279A.070.

³ ORS 279B.050(4).

⁴ ORS 279A.025.

Attorney General’s Model Rules do not apply to the contracting agency, the contracting agency is subject to the Attorney General’s Model Rules.⁶ Contracting agencies have specific rulemaking authority to address matters other than rules of procedure, regardless of whether the contracting agency accepts the Model Rules or adopts its own rules of procedure.⁷

The Code gives DAS the right, power and authority to carry out public contracting activities for most state agencies,⁸ and so most state agencies must look to DAS for guidance to determine applicable rules and on other matters related to public contracting. However, contracting agencies that are not subject to DAS authority must make their own decisions about whether to accept the Attorney General’s Model Rules by default, and must take steps to create procedures for the screening and selection of persons to perform personal services contracts (although the Model Rules may be adopted by reference for that purpose).

E. Affirmative Action Programs

A contracting agency may limit competition on contracts with an estimated cost of \$50,000 or less in order to pursue affirmative action programs established by the contracting agency.⁹ In addition, a contracting agency may require its contractors to subcontract with business enterprises certified as disadvantaged, minority, women or emerging small business enterprises under ORS 200.055, or require its contractors to subcontract with such certified business enterprises that are located or draw their workforce from areas classified as economically distressed by the Oregon Economic and Community Development Department.¹⁰ In accordance with the procedures set forth in OAR 137-046-0210(4), a contracting agency may disqualify persons from consideration for award of the contracting agency’s contracts for fraud and prohibited conduct related to obtaining certification as a disadvantaged, minority, women or emerging small business enterprise, or subcontracting with such certified enterprises.¹¹

⁵ See, respectively, ORS 279A.025(2)(s) and ORS 279A.025(3)(j).

⁶ ORS 279A.065(4) and (5).

⁷ ORS 279A.070.

⁸ ORS 279A.050(2). State agencies should refer to ORS 279A.050 and contact their legal counsel to determine if they are subject to DAS’ purchasing authority under the Code.

⁹ ORS 279A.100(3).

¹⁰ ORS 279A.105(1) and (2).

¹¹ See OAR 137-046-0210(4), implementing ORS 200.065 and 200.075.

F. Contract Preferences

The Code retains existing contract award preferences for goods and services manufactured and produced in Oregon and for the procurement of goods manufactured from recycled materials. The Code requires contracting agencies to give preference to goods or services that have been manufactured or produced in Oregon “if price, fitness, availability and quality are otherwise equal.”¹² OAR 137-046-0300(2) provides standards to apply to determine when such equality exists. ORS 279A.125 requires contracting agencies to select goods certified to be made from recycled materials if certain conditions exist.¹³ The Model Rules defer to standards established by the contracting agency to determine if particular goods are manufactured from recycled materials.

The Code maintains the current reciprocal preference of ORS 279.029(2), whereby bids of non-resident bidders (but not proposers) are assessed a percentage increase equal to the percentage of the preference that would be given to the bidder in the state in which the bidder resides. The Code requires the Oregon Department of Administrative Services to publish a list of states that give such a preference, and the amount of the preference.¹⁴ Contracting agencies may rely on that list when applying the reciprocal preference without incurring any liability.¹⁵

G. Cooperative Purchasing

ORS 279A.200 through ORS 279A.225 provide contracting agencies with the specific authority to engage in “cooperative purchasing,” whereby contracting agencies may conduct certain public contracting activities on behalf of other contracting agencies, participate in contracting activities conducted by other contracting agencies, or rely on their membership in a cooperative procurement group (e.g., the Oregon Cooperative Purchasing Program (ORCPP) operated by the Oregon Department of Administrative Services) as the basis for the selection of contractors to provide certain goods or services. A contracting agency may enter into a contract or price agreement arising out of a cooperative procurement as an alternative to engaging in screening and selection methods

¹² ORS 279A.120(2)(a).

¹³ The four conditions are (i) the recycled product is available; (ii) the recycled product meets applicable standards; (iii) the recycled product can be substituted for a comparable nonrecycled product; and (iv) the recycled product’s costs do not exceed the costs of nonrecycled products by more than five percent, or a higher percentage if a written determination is made by the contracting agency. ORS 279A.125(2).

¹⁴ ORS 279A.120(4).

set forth in ORS Chapter 279B or 279C. The Code describes three types of cooperative procurements, and establishes the conditions under which a contracting agency may participate in or administer each. Those conditions include conditions related to the substantive nature of the screening and selection process, various notice and comment processes that a contracting agency must provide when it chooses to participate in certain cooperative procurements, and the procedures governing protests of the procurement process, the solicitation document, or the award or proposed award of a contract arising out of a cooperative procurement. The types of cooperative procurements, and the general substantive and procedural requirements are described below.

1. Joint Cooperative Procurements. Joint cooperative procurements are cooperative procurements in which the contracting agencies or the cooperative procurement group are identified in the applicable solicitation document. A joint cooperative procurement may not be a permissive cooperative procurement. The Model Rules provide that a contracting agency may use a joint cooperative procurement to establish contracts or price agreements for goods, services (including personal services) and contracts for public improvements. A contracting agency may enter into a contract or price agreement arising out of a joint cooperative procurement if the solicitation and award process is an open and impartial competitive process that uses source selection methods substantially equivalent to those set forth in ORS 279B.055 (competitive sealed bids), 279B.060 (competitive sealed proposals), or 279B.085 (special procurement), or substantially equivalent to the competitive bidding process in ORS Chapter 279C. The Code does not establish any separate notice requirements, but does require that the solicitation and the original contract or price agreement identify each participating contracting agency or cooperative procurement group.

2. Permissive Cooperative Procurements. Permissive cooperative procurements are cooperative procurements in which the contracting agencies are not identified in the applicable solicitation document. The Model Rules provide that a contracting agency may use a permissive cooperative procurement to establish contracts for goods and services (including personal services). A contracting agency may enter into a contract or price agreement arising out of a permissive cooperative procurement if the

¹⁵ Id.

solicitation and award process is an open and impartial competitive process that uses source selection methods substantially equivalent to those set forth in ORS 279B.055 (competitive sealed bids) or 279B.060 (competitive sealed proposals). If a contracting agency estimates that it will spend in excess of \$250,000 on the goods or services acquired under a contract or price agreement arising out of a cooperative procurement, then it must advertise its intent to do so, provide vendors the opportunity to submit comments, and respond to any comments it receives.¹⁶

3. Interstate Cooperative Procurements. Interstate Cooperative Procurements are permissive cooperative procurements in which one or more of the participating agencies are located outside the state of Oregon. The Model Rules provide that a contracting agency may use an interstate cooperative procurement to establish contracts for goods and services (including personal services). A contracting agency may enter into a contract or price agreement arising out of an interstate cooperative procurement if the solicitation and award process is an open and impartial competitive process that uses source selection methods substantially equivalent to those set forth in ORS 279B.055 (competitive sealed bids) or 279B.060 (competitive sealed proposals). A contracting agency, or a cooperative procurement group of which it is a member, must advertise its intent to enter into a contract arising out of the interstate cooperative procurement, provide vendors the opportunity to submit comments, and respond to any comments it receives.¹⁷

The Model Rules permit a contracting agency that administers a cooperative procurement to establish the conditions under which other contracting agencies may participate in cooperative procurements administered by the administering contracting agency. In addition, the Model Rules permit, but do not require, the administering contracting agency to include provisions in solicitation documents, contracts or price agreements to assist other contracting agencies in fulfilling their obligations under the Code and the Model Rules.¹⁸

Finally, ORS 279A.225 provides the means for protests of solicitation documents and contract award decisions related to cooperative procurements and protests and

¹⁶ ORS 279A.215(2) and (3).

¹⁷ ORS 279A.220(2) and (3).

judicial review of a contracting agency's authority to enter into a contract arising out of a cooperative procurement. That same statute also makes clear that contract disputes between a participant in a cooperative procurement and a contractor shall be resolved only between those two parties.

III. ORS Ch 279B and DIVISION 47 OF THE MODEL RULES

A. Introduction

Division 47 of the Model Rules implements ORS Chapter 279B and governs the procurement of goods and services. As discussed in Section II, state contracting agencies must also procure personal services, except architectural, engineering, land surveying and related personal services, pursuant to Division 47. Personal services contracts of local contracting agencies are not subject to Division 47 unless the local contracting agency adopts Division 47 as the procedures it will use to procure personal services.

B. Methods of Source Selection

Although ITBs and RFPs remain the primary methods of source selection, the Code and Model Rules provide for alternative contracting methods and greater procurement flexibility than under current law.

1. Competitive Sealed Bidding. The Code preserves most of the current requirements for ITBs, but explicitly recognizes some new procedures including: express authorization to make multiple awards; the ability to provide public notice electronically when authorized by the director of the Department of Administrative Services (DAS) or the local contract review board; and the ability to conduct multistep sealed bids, as discussed in greater detail below.

2. Competitive Sealed Proposals. ORS 279B.060 and Division 47 contain methods of contractor selection for RFPs new to Oregon. The contracting agency may evaluate proposals based on the following methods under ORS 279B.060(6)(b): award based solely on ranking of proposals, discussions leading to best and final offers in which the contracting agency may not disclose private discussions leading to best and final offers, discussions leading to best and final offers in which the contracting may not disclose information derived from proposals submitted by competing proposers, serial

¹⁸ OAR 137-046-0410.

negotiations, competitive simultaneous negotiations, multi-tiered competition to identify a competitive range, multistep RFPs, and any combination of methods authorized by the Code and Model Rules.

Division 47 contains both general procedures applicable to all RFPs that use a multi-tiered or multistep process and specific procedures applicable to specific selection processes. OAR 137-047-0261 sets forth general procedures applicable to the various competitive processes, while OAR 137-047-0262 describes the procedures for the establishment of a competitive range, for conducting discussions and negotiations, and for receiving best and final offers. OAR 137-047-0263 sets forth the procedures for conducting multistep sealed proposals.

A contracting agency may now also issue an addendum to the RFP *after* RFP closing that modifies the criteria, rating process and procedure for any tier of competition before the start of the tier to which the addendum applies under ORS 279B.060(6)(d). When the contracting agency uses a multi-tiered or multistep competitive process, the contracting agency may, but is not required to, provide an exclusion protest allowing bidders or proposers to protest exclusion from subsequent tiers or steps of competition during the solicitation process. If the contracting agency does not provide this exclusion protest during the solicitation process, then the contracting agency must allow bidders or proposers to protest exclusion from a step of competition as part of the contracting agency's contract award protest. See OAR 137-047-0261(6).

The contracting agency must award the contract to the responsible proposer whose proposal the contracting agency determines in writing to be the most advantageous to the contracting agency based on the factors specified in ORS 279B.060(10). When the RFP permits multiple awards, the contracting agency must award the contract to the responsible proposers who qualify for award of the contract under the terms of the RFP.

3. Multistep Sealed Bids and Proposals. Multistep ITBs and RFPs allow the contracting agency to initially request unpriced bids or proposals and later issue an ITB or RFP to eligible bidders or qualified proposers, as determined by the contracting agency, for price submittals. If time is a factor, the contracting agency may require bidders or proposers to submit separate price bids or proposals to be opened after the technical evaluation. Under OAR 137-047-0257 for multistep sealed bids and OAR 137-

047-0263 for multistep sealed proposals, the contracting agency must give public notice for the first phase, but not for subsequent phases. The contracting agency must also provide bidders and proposers the opportunity to protest the solicitation, any addenda issued, and the award of the contract. The contracting agency may also provide an exclusion protest allowing bidders or proposers to protest exclusion from a subsequent step of competition during the solicitation process as discussed above under Competitive Sealed Proposals. See OAR 137-047-0257(4)(e) and OAR 137-047-0261(6).

4. Small Procurements. The Code and the Model Rules provide a process for the procurement of goods or services costing less than or equal to \$5,000 under ORS 279B.065 and OAR 137-047-0265. Contracting agencies must adopt their own rules of procedure to govern small procurements pursuant to ORS 279A.070. A contracting agency may amend a contract awarded as a small procurement pursuant to OAR 137-047-0800 (as discussed in greater detail below), but the cumulative amendments may not increase the total contract price to greater than \$6,000.

5. Intermediate Procurements. The Code and Model Rules provide a process for the procurement of goods or services costing more than \$5,000 and less than or equal to \$150,000 under ORS 279B.070 and OAR 137-047-0270. For intermediate procurements equal to or exceeding \$75,000, the contracting agency must use a written solicitation to obtain quotes, bids, or proposals. A contracting agency may negotiate with an offeror to clarify the quote, bid, or proposal, or to make the quote, bid, or proposal more advantageous to the contracting agency. A contracting agency may amend a contract awarded as an intermediate procurement pursuant to OAR 137-047-0800, but the cumulative amendments may not increase the contract price to greater than 25% of the original contract price.

6. Sole-source Procurements. Awarding a contract without competition to a designated sole-source requires a written determination by the director of DAS or the local contract review board. The determination must be based on findings set forth in ORS 279B.075(2). As set forth in OAR 137-047-0275, the contracting agency must give public notice of the sole-source procurement in instances in which the contracting agency would be required to select a contractor based on competitive sealed bids or proposals,

but for the contracting agency's determination that the goods or services are available only from one source.

7. Emergency Procurements. A contracting agency may award a contract without competition if an emergency exists as defined in ORS 279A.010. The head of the contracting agency or designee must authorize the emergency procurement, and the contracting agency must document the nature of the emergency and the method of contractor selection.

8. Special Procurements. Special Procurements serve a purpose similar to the formal exemption process under current ORS 279.015(2). Like the current exemption process, the purpose of special procurements is to allow the contracting agency to use an alternative procurement process. There are two types of special procurements under ORS 279B.085: (1) class special procurements for the purpose of entering into a series of contracts over time for a specified class of goods and services; and (2) contract-specific special procurements for the purpose of entering into a single contract or a number of related contracts on a one-time basis. The contracting agency must submit a written request to obtain the approval of the director of DAS or the local contract review board, as applicable, to use a special procurement. The director or local contract review board must make the findings set forth in ORS 279B.085(3) to approve the special procurement. The contracting agency must also give public notice both of its request for approval of a special procurement and of the approval of the special procurement in accordance with the timelines set forth in OAR 137-047-0285.

C. Public Records Law

Under ORS 279B.060(5), a contracting agency may now withhold from disclosure the contents of proposals until after the notice of intent to award. After the contracting agency issues a notice of intent to award, the contracting agency may withhold from disclosure trade secrets, as defined in ORS 192.501, contained in a bid and materials exempt or conditionally exempt from disclosure under the public records law contained in a proposal.

D. Electronic Procurement

1. Generally. OAR 137-047-0330 allows contracting agencies to conduct all phases of a procurement by electronic methods, including posting of advertisements

and receipt of offers, to the extent the contracting agency specifies in the solicitation document or other written instructions. The contracting agency must open electronic offers in accordance with electronic security measures in effect at the time of offer receipt.

2. Reverse Auctions. The electronic procurement rules also expressly authorize the use of “reverse auctions.” This is a process that allows offerors to submit electronic offers during a specified period of time during which the contracting agency may reveal, updated on a real-time basis, the most current lowest offer price or the highest ranking offer. Until the deadline established by the contracting agency for submitting offers, offerors may revise their electronic offers, except that an offeror may not increase its price or offer a lower price unless that price is below the then lowest electronic offer.

E. Qualified Products List/Debarment

1. Qualified Products List. Under ORS 279B.115, a contracting agency may develop and maintain a qualified products list in instances in which the testing or examination of goods before initiating a procurement is necessary or desirable to best satisfy the requirements of the contracting agency. The contracting agency must give public notice of the opportunity for potential contractors to submit goods for inclusion on the list. The inclusion of goods on a qualified products list does not constitute a prequalification under ORS 279B.120 and 279B.125.

2. Debarment. A contracting agency’s ability to debar prospective bidders and proposers under ORS 279B.130 parallels the concept of conduct disqualification under current ORS 279.037(2). A contracting agency may allow a debarred person to participate in solicitations and contracts on a limited basis during the debarment period as set forth in OAR 137-047-0575.

F. Price Agreements

The Code explicitly recognizes the price agreement, which is defined in ORS 279A.010(1)(t) as a contract for the procurement of goods or services at a set price with no minimum or maximum purchase amount or with an initial order combined with a continuing contractor obligation to provide goods or services in which the contracting agency does not guarantee a minimum or maximum additional purchase. The Code

makes a price agreement a firm offer by the contractor by providing that the price agreement is enforceable for the period specified in the price agreement (but this applies only to the contractor; the price agreement does not bind the purchasing agency to make purchases in certain quantities).

G. Legal Remedies

1. Overview. ORS 279B and the Model Rules contain new legal remedies provisions that are very detailed describing the administrative and judicial remedies for violations of ORS 279A and 279B. The legal remedies provisions are contained in ORS 279B.400 through 279B.425 and in OAR 137-047-0700 through 0760. Whereas the current ORS chapter 279 contains a very brief provision on remedies, the new Code and Model Rules contain eight separate provisions addressing legal remedies.

2. Common Themes. While there are unique requirements applicable to each remedy the Code provides, there are also some similarities among the remedies provisions. Each provision has an exhaustion of administrative remedies requirement: the protestor must first file a written protest with the contracting agency and must exhaust the contracting agency's protest process before seeking review in court. With some exceptions, the venue for judicial review of protest decisions for state agencies is Marion County or the circuit court for the county in which the principal offices of the state agency are located; for local agencies venue is the circuit court for the county in which the principal offices of the agency are located. If a protestor seeks timely judicial review, then the contracting agency may not proceed with contract execution unless the contracting agency determines in writing that there is a compelling governmental interest in proceeding or that the goods or services are urgently needed. The court may nevertheless stay performance of the contract if the court finds that the contracting agency's determination was not supported by substantial evidence or constitutes a manifest abuse of discretion.

3. Remedies Provisions. The Code and Model Rules contain eight separate provisions addressing protests and judicial review of procurement and contract award decisions. Some highlights of the legal remedies provisions are as follows:

a. Special Procurements. The protest and judicial review process for special procurements provides a protest opportunity for both the contracting agency's request for

approval of a special procurement and the contract review authority's approval of the special procurement. The protest and judicial review process for a class special procurement and a contract specific special procurement are different. The protest and judicial review process for state agencies and local agencies are also different.

b. Sole-Source Procurements. A contracting agency must now provide affected persons the opportunity to protest the contracting agency's determination that the goods or services are available from only one source. However, under the new Model Rules, the contracting agency must provide a protest opportunity only for those sole-source procurements requiring public notice.

c. Multi-Tiered and Multistep Solicitations. The legal remedy provision for multi-tiered and multistep solicitations is similar to the competitive range protest provision in the current Model Rules, but has been expanded. The purpose of this provision is to allow an affected bidder or proposer to protest exclusion from the competitive range or from a tier or step of competition. The contracting agency has a choice about the timing of this protest opportunity. The contracting agency may choose to provide bidders or proposers the opportunity to protest exclusion from the competitive range or from a tier or step of competition either during the solicitation process or as part of the intent to award protest. See OAR 137-047-0261(6).

d. Solicitations. As allowed by the current Model Rules, bidders and proposers may seek changes to and submit protests of solicitation terms and conditions. This remedy is available for ITBs, RFPs, and special procurements. The contracting agency must issue a decision on the protest no less than three business days before bids, proposals, or offers are due, unless the contracting agency makes a written determination that circumstances require a shorter time limit.

e. Contract Award. Bidders and proposers may protest the award of a contract or the intent to award of a contract by following a process similar to the contract award protest process under the current Model Rules.

f. Qualified Product List Decisions. The new Model Rules allow a prospective bidder or proposer to protest the contracting agency's decision to exclude the prospective bidder's or proposer's goods from the contracting agency's qualified products list.

g. Prequalification and Debarment Decisions. The new Code and Model Rules provide a process for appealing a contracting agency’s denial, revocation, or revision of a prequalification decision or a contracting agency’s debarment decision. As provided in current ORS 279, the protestor is entitled to a hearing conducted by the director of DAS for state agencies or the local contract review board for local agencies.

h. Other Violations. ORS 279B.420 describes the judicial review process for violations of ORS chapter 279A and 279B for which no judicial remedy is otherwise provided in the Code with certain exceptions.

H. Contract Amendments

Contract amendments are not addressed in current ORS 279 or the Model Rules, and contracting agencies have not had much guidance in determining the appropriate scope of amending contracts without additional competition. For the first time, the Model Rules address contract amendments. Under OAR 137-047-0800, a contracting agency may amend a contract to: (1) add additional goods or services within the scope of the solicitation document, contract, or approval of a special procurement; or (2) renegotiate terms and conditions if it is advantageous to the contracting agency, subject to several limitations set forth in OAR 137-047-0800(2). This rule also addresses the permissible scope of amendments to contracts awarded as small and intermediate procurements, emergency contracts, and price agreements.

IV. ORS Ch 279C and DIVISION 48 OF THE MODEL RULES

A. Overview

In approaching ORS Chapter 279C regarding “Public Contracting – Public Improvements and Related Contracts”, it is important to keep the following concept in mind: there are no *fundamental* changes in the public contracting requirements when a state or local government entity procures design services, construction services and other construction-related services. However, Chapter 279C does represent a significant refinement, clarification and reorganization of the statutory provisions which control state and local government procurement of services in the design and construction field. Therefore, while practitioners cannot look forward to learning a completely new system in these areas, they must nevertheless keep a sharp pencil handy when navigating the

twists and turns of Chapter 279C and Divisions 48 and 49 of the Model Rules.

Currently, ORS Chapter 279 addresses construction design services with specific provisions pertaining to the services of “registered professional engineers, registered architects and registered professional land surveyors.”¹⁹ As for other construction-related personal services (such as project management services, commissioning services, special inspections & testing services, etc.), the provisions of Chapter 279 take a more general approach, regulating procurement of these services as “contracts for personal services.”²⁰ Under these provisions, state and local agencies have broad discretion to establish screening and selection procedures for these types of services, and to designate particular contracts or classes of contracts as “personal services contracts.”²¹

New ORS Chapter 279C rounds up the scattered provisions pertaining to construction design services, and calls out other construction-related services from the broader category of “personal services” by defining those services as “Related Services” and by requiring screening and selection procedures for Related Services.²² For architectural, engineering and land surveying services, the “qualifications based selection” process (also known as “QBS”, and discussed in more detail below) remains the standard procurement method governing procurements by state agencies and certain local agencies that fall within the guidelines of ORS 279C.110(2) (those same guidelines are currently set forth in ORS 279.057(9)).²³ For Related Services, both state and local agencies retain broad discretion in establishing screening and selection procedures for these types of services.²⁴

The principal architectural and engineering services procurement statute, that is

¹⁹ ORS 279.057(1)

²⁰ ORS 279.051(1)

²¹ ORS 279.051(1) & (2)

²² See generally ORS 279C.100 through 279C.125. See also ORS 279C.100(6) and 279C.120 regarding “related services.”

²³ The local agency receives moneys from the State Highway Fund under ORS 366.762 or 366.800 or a grant or loan from the state that will be used to pay for any portion of the design and construction of the project; the total amount of any grants, loans or moneys from the State Highway Fund and from the state for the project exceeds 35 percent of the value of the project; and the value of the project exceeds \$400,000. Note, however, that such local agencies will not be required to use a QBS process on and after July 1, 2008, pursuant to the sunset provisions of ORS 279.057, that are retained in ORS 279C.110.

²⁴ See ORS 279C.120. The permitted procedures can be unique procedures established by the agency under ORS 279C.105, the QBS method required under ORS 279C.110, or a variety of methods listed in subsection (1)(c) of ORS 279C.120.

currently located at ORS 279.057 and located at ORS 279C.110 of the Code, has not been substantively modified. It was reorganized to allow practitioners to more easily read the provisions of the statute, and more quickly determine if a particular agency is required to use a QBS process in procuring consultant services. Local agencies remain generally exempt from the QBS requirements of the statute (except in the situation described in footnote 22). For state agencies procuring Architectural, Engineering, or Land Surveying Services, a QBS process meeting the requirements of the statute is still required (unless the state agency is exempt from the requirements of the Code).

Now, some of you may be asking: “What is this QBS process, that sounds so exotic and mysterious?” Simply said, the QBS process is one where the agency initially selects a design consultant to perform architectural, engineering or land surveying services on the basis of qualifications alone, and is prohibited from considering the price that the consultant will charge for the design services (directly or indirectly). The agency is only permitted to inquire about the consultant’s price for performing the services once negotiations with the highest ranked firm have begun.²⁵ The QBS process does not apply to Related Services, unless the agency adopts a QBS process for the procurement of those types of services.

The QBS process itself originates with the federal Brooks Act, which was originally enacted in October 1972.²⁶ Oregon first took the QBS plunge in 1997 , and then temporarily extended the scope of the QBS procurement method in 2001. Initially, the Oregon QBS requirements applied only to state agencies that operated under the Chapter 279 umbrella. In 2001, the QBS process was extended to cover certain local agencies meeting the funding requirements mentioned above, and to address certain other specialized issues.²⁷ The application of the QBS process to these particular local agencies automatically ends, however, on July 1, 2008.

The Division 48 Model Rules update the current Division 35 Model Rules (which are limited to architectural, engineering and land surveying services under the specific

²⁵ See ORS 279.057(2) and ORS 279C.110(1).

²⁶ 40 USC 1101-1104.

²⁷ See footnote 22 above. See also ORS 279.057(4) and (5), ORS 279.047 and ORS 279.058 for the provisions dealing with these “specialized issues”, if you are REALLY interested in the 2001 adjustments to ORS 279.057 and design services procurements in general.

direction of ORS 279.049(2))²⁸, in order to meet the requirements of ORS 279C.100 through 125 and ORS 279A.065. The principal revisions to the Division 35 Architectural and Engineering Rules that are reflected in the Division 48 Rules include the following:

- 1) Establishing screening and selection procedures for Related Services²⁹
- 2) Increasing the “small procurement” Estimated Fee limit for direct appointments from \$10,000 to \$25,000³⁰
- 3) Increasing the Estimated Fee limit for state agency “continuation” direct appointments from \$75,000 to \$150,000³¹
- 4) Increasing the Estimated Fee limit for informal selections from \$75,000 to \$150,000³²
- 5) Clarifying the provisions dealing with prohibited compensation methods, and restrictions on providing design services and then later selling building materials, supplies or equipment to an agency³³
- 6) Adding provisions addressing the situation where a project has been delayed or altered and a consultant contract for that project has expired or been terminated³⁴
- 7) Adding provisions addressing permitted amendments to a consultant contract³⁵

B. Division 48 Definitions

OAR 137-048-0110 includes some definitions that are unique to the construction design field. These definitions supplement those definitions set forth in ORS 279A.010, ORS 279C.100, and OAR 137-046-0110. Many of the definitions that are currently contained in the Division 35 Model Rules were removed from Division 48, in favor of comprehensive definitions of these terms in the Code or the desire to centralize as many common definitions as possible in Division 46 of the Model Rules. The term “Project” is new to Division 48 and was needed to provide clarity to the rules in the situation where a

²⁸ “The Attorney General shall add to the model rules described in subsection (1) of this section a provision for procedures for the screening and selection of persons to perform architectural, engineering and land surveying personal service contracts. In developing such procedures, the Attorney General shall use the least restrictive processes allowed under ORS 183.341.”

²⁹ OAR 137-048-0130(2).

³⁰ OAR 137-048-0200(1)(b)

³¹ OAR 137-048-0200(1)(c)

³² OAR 137-048-0210(1)

³³ OAR 137-048-0300

³⁴ OAR 137-048-0310

³⁵ OAR 137-048-0320

project has already begun and is being continued, whether that project was delayed and the contract has expired or been terminated (OAR 137-048-0310) or merely continued in a later phase of the project (OAR 137-048-0200(1)(c) and (d)). The term “Request for Qualifications” or “RFQ” has a unique meaning in the construction design field, and needed to be distinguished from the term “Request for Quotes.” The term “Estimated Fee” is of course a critical term to understand in determining the correct procurement procedure to use for a particular transaction, but the definition in the Division 48 rules has not been significantly revised.

C. List of Interested Consultants; Performance Record

OAR 137-048-0120 was revised to clarify the provisions governing how agencies are to compile and maintain a list of qualified consultants who are interested in performing Architectural, Engineering, or Land Surveying Services or Related Services for an agency, and exactly what information agencies are required to retain under the rule. The rule was also revised to clarify state agency responsibilities on compiling and maintaining records pertaining to contracts to perform Architectural, Engineering, or Land Surveying Services, as required by ORS 279.057(5).³⁶

D. Applicable Selection Procedures; Pricing Information

OAR 137-048-0130 includes provisions of broad application within Division 48, and is designed to direct the reader into the detailed selection procedure that will apply to the transaction at hand, whether the transaction involves a state agency, local agency, or a local agency that is subject to the funding requirements of ORS 279.057(9).³⁷ This rule was also revised to add a general provision acknowledging the validity of agencies’ use of electronic methods to screen and select consultants to perform Architectural, Engineering, or Land Surveying Services or Related Services.³⁸

E. Selection Procedures

Other than the Estimated Fee dollar limit increases already discussed in subparagraph A. above, there were no extensive revisions to the Direct Appointment Procedure, the Informal Selection Procedure, or the Formal Selection Procedure. Provisions pertaining to “High Tie Proposals” were removed from the Informal Selection

³⁶ ORS 279C.110(7) under the Code.

³⁷ ORS 279C.110(2) under the Code.

Procedure and the Formal Selection Procedure, and included as a separate rule at OAR 137-048-0230. A separate section dealing with RFQ or RFP cancellation, as well as consultant costs of submitting a proposal, was added at OAR 137-048-0250. In the Direct Appointment and Informal Selection procedures, provisions were added pertaining to contract negotiations and required resulting contract provisions that are substantially similar to the provisions under the Formal Selection method (altered as needed to fit any unique requirements for the Direct Appointment or Informal Selection methods).³⁹

F. Prohibited Payment Methodology; Purchase Restrictions

In OAR 137-048-0300 some revisions were made to clarify that the prohibited payment/compensation methods included in subsection (1) only address such compensation methods that are contained in the text of the resulting contract itself. A consultant’s internal practices in arriving at a compensation proposal are not controlled by this provision. Subsection (2) of the rule clarifies that a “time and materials” compensation method, without a maximum, not-to-exceed contract price, is not permitted. Subsection (3)(a) has been clarified to cover not only a strict design-build transaction, but also an energy savings performance contract transaction that might include design-build as an agreed-upon phase of the work for a particular project.

G. Contract Amendments

OAR 137-048-0320 was added to Division 48 to provide direction on the permitted scope of amendments to Division 48 resulting contracts, and the methods to be used to accomplish the amendments. Subsection (1) of the rule includes the requirement that the agency informally determine, in the agency’s sole discretion, that the amendment would not materially impact the field of competition for the services described in the RFP. The rule provides that the field of competition would not be adversely affected, within the meaning of the rule, “if the Contracting Agency reasonably believes that the number of Proposers would not significantly increase if the RFP were re-issued to include the additional services.”⁴⁰

V. ORS Ch 279C and DIVISION 49 OF THE MODEL RULES

³⁸ OAR 137-048-0130(3)

³⁹ OAR 137-048-0200(3) and OAR 137-048-0210(3).

A. Background; Limited Statutory and Rule Changes

Of the three new chapters within the Public Contracting Code, this chapter most closely resembles existing ORS Ch 279. Current statutes were reorganized and updated, but substantive changes required complete consensus of an industry wide forum which then reported recommendations for House Bill 2341 to the overall Public Contracting Law Revision Work Group established by House Resolution 1 during the 2001 Regular Session. As a result, unlike ORS Ch 279A and 279B, ORS Ch 279C does not constitute a wholesale change from existing law. Competitive bidding was retained as the norm for public improvements, and no substantive changes were made to statutes on hours of labor, prevailing wage rates, payment and interest, retainage, actions against payment bonds, first-tier subcontractor disclosure, prequalification, disqualification or legal remedies.

Reflecting the carve out of ORS Chapter 279C as a special chapter for public improvements and related contracts, the current Model Rules addressing public procurement generally (OAR Chapter 137, Division 30) and public improvements specifically (OAR Chapter 137, Division 40) were combined as the base for new Model Rules implementing ORS Ch 279C. These new rules (OAR Chapter 137, Division 49) reflect the same philosophy as was used in the underlying statutes; that is, primarily to reorganize and update, but to limit changes unless there was a clear consensus to make them.

However, as outlined below, there were several areas of substantive change in ORS Ch 279C that have also been reflected in the Division 49 Model Rules.

B. Bidding Exceptions and Exemptions

While competitive bidding is retained as the norm for public improvement contracts under ORS 279C.335, an exception is allowed for intermediate level procurements (see below), emergency contracting procedures are clarified, and class exemptions are specifically authorized. ODOT's competitive bidding exemption authority, obtained during a 2002 Special Session, also now sunsets on July 1, 2012.

ORS 279C.335(5) provides that emergency contracts may be declared pursuant to formal rules, and OAR 137-049-0150 provides the details for making that declaration,

⁴⁰ OAR 137-048-0320(1).

modifying the contract and also for excusing bonds. OAR 137-049-630(5) now provides guidance on establishing a class exemption from competitive bidding. And for ease of use, the Division 49 rules contain numerous cross references to the competitive bidding exemption requirements that must be followed prior to utilizing competitive proposals (as described below), as well as to Request for Proposals procedures.

C. Performance and Payment Bonds

ORS 279C.375 and 279C.380 specifically require a 100% performance bond as well as a 100% payment bond, rather than one combined bond, and clarifies the purpose of each bond. The bonds are now required from a surety company with a state certificate of authority, and these statutes clarify that the right of action on the payment bond also applies in the case of competitive proposals. OAR 137-049-0290 further addresses bid or proposal security, including a description of when proposal security might be appropriate (where award may be made without negotiation following receipt of a firm offer). See OAR 137-049-0290(2).

D. Competitive Proposals

These new provisions at ORS 279C.400 to 279C.410 do not authorize the use of competitive proposals for public improvement contracts, but set out a procedural framework where they are authorized through the exemption process. Bidding statutes applicable to competitive proposals are identified, as well as those statutes that are deemed inapplicable. Requirements for Requests for Proposals and the selection process are also set forth.

The implementing Model Rules provide greater detail in those areas, primarily centralized in a subdivision of Division 49 entitled “Alternative Contracting Methods”, OAR 137-049-0060 to 137-049-0690. That subdivision continues to provide specific direction about Design-Build Contracts, Energy Savings Performance Contracts and contracts for Construction Manager/General Contractor services.

E. Competitive Quotes

These new provisions were not codified by Legislative Counsel because they expire in 2009, but they have the force of law and may be cited as “Oregon Laws 2003, Chapter 794, Sections 132 and 133”. The provisions are set forth in full as Legislative Counsel notes following ORS 279C.410. They authorize the use of competitive quotes

for intermediate level procurements and set out the procedural framework. Three informal quotes are required, with award made to the lowest priced quote or a written record of the alternative basis of award. The maximum dollar thresholds, as estimated by the contracting agency, are at \$100,000 generally or at \$50,000 for a contract for a highway, bridge or other transportation project.

OAR 137-049-0160 addresses the new competitive quote provisions, including the procedures for written or oral quotes, and, as required by the Code, provides for amending such contracts to exceed the intermediate level thresholds (in which price increases of up to 25% may be made by a contracting officer for additional reasonably related work, and may be increased up to 50% with an additional level of approval).

F. Construction Contracts that are not Public Improvements

Under these new provisions at ORS 279C.320 such contracts (including minor alterations, ordinary repair or maintenance of a public improvement) are to be procured as ordinary goods and services under ORS Ch 279B. Other non-procurement requirements of ORS Ch 279C, such as prevailing wage rates, may still apply.

OAR 137-049-0140 clarifies that such contracts may also be amended under the provisions of ORS Ch 279B, and provides a useful listing of ORS Ch 279C statutes that still apply (referencing specific ORS sections that may be applicable in Disqualification, Legal Actions, Required Contract Conditions, Hours of Labor, Retainage, Subcontracts, Action on Payment Bonds, Termination and Prevailing Wage Rates requirements for Public Works contracts).

G. Definition of a “Public Improvement”

The definition at ORS 279A.010 was also changed to exclude “*projects for which no funds of a public agency are directly or indirectly used except for participation that is incidental or related primarily to project design or inspection.*” The purpose of that change was to parallel a similar exemption from “public works” made during the 2001 Session. (See Oregon Laws 2001, Chapter 628, House Bill 3350)

OAR 137-049-0140, described in Section F above, also applies to these contracts since they are not public improvement contracts. And see related Oregon Bureau of Labor and Industries rules in OAR Chapter 839 for the parallel exemption for public works contracts.

H. Electronic Procurement

Unlike ORS Ch 279B, the new ORS Ch 279C does not specifically authorize submission and receipt of offers electronically. ORS 279C.360(1) does allow electronic advertisement (provided that public improvement contracts estimated to exceed \$125,000 must also be published in a trade newspaper of general statewide circulation), and ORS 279C.410(7) also provides for posting notice of intent to award electronically.

OAR 137-049-0310 recognizes these distinctions and sets forth the parameters for contracting agencies to follow if they elect to authorize submission and receipt of offers electronically for public improvement contracts.

I. Changes to the Work and Contract Amendments

OAR 137-049-0910 is a new rule meant to assist contracting agencies in implementing the Code generally, and is specifically required for competitive proposals by ORS 279C.400(1). It defines the difference between a contract “Amendment” and “Changes to the Work” provisions common to construction contracts, setting forth the requirements for each and clarifying that when those requirements are met, the amendment or change does not result in a new procurement (and, accordingly, an exemption from competitive bidding is not required for additional related work).

VI. CODE AMENDMENTS IN 2005 SESSION

Organizing and drafting the new Code was a massive undertaking involving scores of people working on three new chapters of Oregon Revised Statutes, and so the timing of its March 1, 2005 operative date was intentionally set to allow technical amendments to take effect before public contracting agencies had to live with any unintended results. The Code organizers and drafters understood that intense scrutiny of the new statutes would be necessary during preparation of DOJ Model Rules, as well as rules of other agencies, and that any errors discovered in the Code during that rulemaking process ought to be able to be corrected before its effective date. As a result, since the 2005 Regular Session convenes in January of 2005, there will be time for corrective legislation to be adopted with an emergency clause prior to the March 1, 2005 operative date of the Code.

The DOJ Law Improvement Proposal, drafted by Legislative Counsel as LC 799, would make the following technical amendments to the Public Contracting Code, and declare an emergency so that they may take effect on March 1, 2005:

1. Corrects reference to economically “depressed” areas to economically “distressed” areas.
2. Provides an exemption in statutes addressing the applicability of various chapters of the Code by specific reference to ORS 279C.320 on construction contracts that are not public improvements (which are procured under ORS Chapter 279B but subject to other requirements within ORS Chapter 279C).
3. Corrects reference to Energy Savings Performance Contracts as not being exempt from the entire Code, but only from competitive bidding under certain conditions.
4. Clarifies that public improvement contracts may be entered into under a joint cooperative agreement (in which agencies are identified), but not under a permissive cooperative agreement (in which an unnamed agency may participate) or interstate cooperative agreement.
5. Identifies state contracting agencies as additional entities (other than local governments) that may designate personal service contracts and contracts for architectural, engineering and related services.
6. Clarifies findings required for class exemptions from competitive bidding requirements for public improvement contracts.
7. Clarifies that emergency contracts may be entered into for public improvements merely by a formal declaration of a contracting agency.
8. Specifically provides rule making authority for amending competitively bid public improvement contracts (as well as those under competitive proposals).
9. Specifically provides authority for submission and receipt of bids by electronic means under ORS Chapter 279C as well as ORS Chapter 279B.
10. Clarifies that contracting agencies make the estimate of contract value in determining whether first tier subcontractor disclosure submissions are required.
11. Adds notice of intent to award requirements to competitive bidding (but not to competitive quotes or emergency contracts) under ORS Chapter 279C as well as Chapter 279B.

- 12.** Makes technical corrections to performance and payment bond requirements and adds a \$50,000 threshold for those requirements.
- 13.** Adds requirement to supply proof of insurance, as well as bonds and executed contract, for return of bid security on competitively bid public improvement contracts (already required under competitive proposals).
- 14.** Provides a method by which contracting agencies may allow performance and payment bonds to be submitted on separate phases of a multi-phased public improvement contract, rather than requiring them in 100% of the contract price up front, and makes technical corrections to ODOT bonding authority.
- 15.** Clarifies that several required contract provisions in ORS Chapter 279C apply only to public improvement contracts, rather than to all public contracts.

ATTACHMENT: Table of DOJ Model Public Contract Rules

DOJ MODEL PUBLIC CONTRACT RULES 2004

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